

FCC MAIL SECTION

App 17, 3:49 PM '96
 Before the
 Federal Communications Commission
 Washington, D.C. 20554

DISPATCHED

MM Docket No. 92-195

In the Matter of

Amendment of Section 73.202(b).	RM-7091
Table of Allotments.	RM-7146
FM Broadcast Stations.	RM-8123
(Beverly Hills, Chiefland, Holiday, Micanopy, and Sarasota, Florida)	RM-8124

MEMORANDUM OPINION AND ORDER (Proceeding Terminated)

Adopted: March 21, 1996;

Released: April 16, 1996

By the Chief, Policy and Rules Division:

1. The Commission has before it an Application for Review filed by Dickerson Broadcasting, Inc. ("Dickerson Broadcasting"), licensee of Station WEAG, Channel 292A, Starke, Florida, directed to the *Memorandum Opinion and Order* in this proceeding, denying its Petition for Reconsideration, 8 FCC Rcd 8515 (1993). Pasco Pinellas Broadcasting Company filed an Opposition to the Application for Review. Sarasota-FM, Inc., Gator Broadcasting Corporation, and Heart of Citrus, Inc. filed a Joint Opposition to the Application for Review. Dickerson Broadcasting filed a Consolidated Reply to the Oppositions. For the reasons discussed below, we dismiss the Application for Review.

Background

2. At the request of Heart of Citrus, Inc., permittee of Station WXOF, Channel 246A, Beverly Hills, Florida, the *Notice of Proposed Rule Making* in this proceeding, 7 FCC Rcd 5910 (1992), proposed the substitution of Channel 246C3 for Channel 246A at Beverly Hills, and modification of the Station WXOF construction permit to specify operation on Channel 246C3. In response to the *Notice*, Sarasota-FM, Inc., licensee of Station WSRZ, Channel 292A, Sarasota, Florida, and Gator Broadcasting Corporation, licensee of Station WRRX, Channel 249A, Micanopy, Florida, filed a joint counterproposal proposing an alternate Channel 292C3 upgrade for WXOF in Beverly Hills, in order to accommodate a Channel 246C2 upgrade for WLVI, Channel 292A, Holiday, Florida, and a Channel 300A substitution for Station WLOH, Channel 247A, Chiefland, Florida. In turn, these channel substitutions permitted a Channel 293C2 upgrade for Station WSRZ, Channel 292A, Sarasota, Florida, and a Channel 247C2 upgrade for Station WRRX, Channel 249A, Micanopy, Florida. The *Report and Order* upgraded Station WLVI in Holiday to Channel 246C2, Station WRRX in Micanopy to Channel 247C2, Station WSRZ in Sarasota to Channel 293C2, and Station WXOF in Beverly Hills to Channel 292C3, 8 FCC Rcd 2197 (1993).

3. The *Report and Order* and the subsequent *Memorandum Opinion and Order* both referred to the three-kilowatt operation of Station WEAG, Channel 292A, Starke, Florida. In the *Report and Order* in MM Docket No. 88-375 ("Mileage Separation Order"), 4 FCC Rcd 6375 (1989), the Commission adopted new separation requirements and provided for the six-kilowatt operation by Class A FM stations. Class A FM stations complying with the new separation requirements are now permitted to operate at six kilowatts. Station WEAG does not comply with the new separation requirements with respect to Station WCJX, Channel 293A, Five Points, Florida, and Station WPVJ, Channel 293A, Ponte Vedra, Florida. In the absence of an agreement among these stations, Station WEAG is, therefore, not eligible to operate at six kilowatts. In addition to establishing an October 2, 1989, effective date, the *Mileage Separation Order* set forth 142 kilometers as the minimum spacing between a Class C3 FM station and a Class A FM station seeking to operate at six kilowatts. The former minimum separation between a Class C3 station and a three-kilowatt Class A FM station was 138 kilometers. The *Mileage Separation Order* also stated that petitions for rule making filed prior to the effective date would be processed pursuant to the former separation requirements. Inasmuch as the Heart of Citrus Petition for Rule Making was filed on September 29, 1989, the applicable separation requirement specified a 138-kilometer separation between the proposed Class C3 allotment at Beverly Hills and Class A FM Station WEAG in Starke. Thus, Channel 292C3 was allotted to Beverly Hills on the basis of the 138-kilometer separation requirement.

4. In its Petition for Reconsideration directed against the *Report and Order*, Dickerson Broadcasting contended that a Channel 292C3 upgrade at Beverly Hills was made without notice and posed an impediment to its efforts to increase the operating power of Station WEAG to six kilowatts. Moreover, Dickerson Broadcasting also contended that there was no basis to apply the former spacing requirements with respect to a Channel 292C3 allotment at Beverly Hills. The *Memorandum Opinion and Order* rejected these arguments and denied the Petition for Reconsideration.

5. In its Application for Review, Dickerson Broadcasting again notes that a Channel 292C3 upgrade at Beverly Hills impedes its efforts to increase the operating power of Station WEAG to six kilowatts. In addition, Dickerson Broadcasting reiterates its view that Channel 292C3 was allotted without adequate notice and should not have been allotted on the basis of the former separation requirements. In regard to an impediment to a six kilowatt operation by station WEAG, Dickerson Broadcasting states in footnote 3 of its Application for Review as follows:

"Indeed, for the record, Dickerson hereby advises the Commission and all parties hereto that, if Dickerson is assured the full measure of protection of the current mileage separations (as opposed to the mileage separations in effect prior to October 2, 1989), Dickerson will withdraw the instant application for review."

6. On March 21, 1996, we granted the application of Heart of Citrus (File No. BPH-940307IZ) to implement the Channel 292C3 upgrade for Station WXOF at Beverly Hills. That application was filed pursuant to Section 73.215 of the Commission's Rules and expressly affords Station

WEAG protection as if it were a six kilowatt Class A FM station.¹ In view of the fact that the authorized facilities of Station WXOF now protect Station WEAG as a six-kilowatt facility in accordance with the current separation requirements set forth in Section 73.207 of the Rules, Dickerson Broadcasting is no longer aggrieved by our action in MM Docket No. 92-195 allotting Channel 292C3 to Beverly Hills. In light of this fact and the representation specifically set forth in footnote 3, we are dismissing the Application for Review.

7. Accordingly, IT IS ORDERED. That the aforementioned Application for Review filed by Dickerson Broadcasting, Inc. IS DISMISSED.

8. IT IS FURTHER ORDERED. That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 776-1654.

FEDERAL COMMUNICATIONS COMMISSION

Douglas W. Webbink
Chief, Policy and Rules Division
Mass Media Bureau

¹ Section 73.215 of the Rules provides for the acceptance of an FM application that proposes a short-spaced transmitter site if the application complies with specified contour protection criteria. See *Amendment of Part 73 of the Commission's Rules to*

Permit Short-Spaced FM Assignments by Using Directional Antennas, 4 FCC Rcd 1681 (1989), *recon. granted in part and denied in part*, 6 FCC Rcd 5356 (1991).